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Patent Application Number: 10/042,987

Attorney Docket Number: A1651-US-NP

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Date

October 7, 2005


Michael J. Nickerson, Reg. # 33,265

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Robert R. BUCKLEY et al. **GROUP:** 2157

SERIAL NO: 10/042,987 **EXAMINER:** S. Halim

FILED: January 11, 2002 **CONFIRMATION:** 5864

FOR: METHOD FOR DOCUMENT VIEWING

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

PETITION UNDER 37 C.F.R. 1.181

The Applicant respectfully petitions the Honorable Commissioner, under 37 C.F.R. 1.181 to invoke the Commissioner's supervisory authority and instruct the Examiner to withdraw the Office Action dated October 4, 2005 and immediately issue a proper Notice of Panel Decision from Pre-Appeal Brief Review in view of the facts and reasons set forth below.

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Statement of Facts

1. On July 15, 2005, the undersigned filed a Notice of Appeal and a Pre-Appeal Brief Request for Review in connection with the above-identified application. The Pre-Appeal Brief Request for Review presented arguments traversing the Examiner's rejection under 35 U.S.C. §112, first paragraph, and the Examiner's rejection under 35 U.S.C. §102(b).

2. On October 4, 2005, the Examiner issued a non-final Office Action withdrawing the rejection under 35 U.S.C. §112, first paragraph, and maintaining the rejection under 35 U.S.C. §102(b).

REMARKS

As respectfully submitted above, the Applicants submitted, on July 15, 2005, a proper Pre-Appeal Brief Request for Review, Notice of Appeal, and appropriate fees. However, the file wrapper record of the above-identified application clearly demonstrates that a pre-appeal brief review was never conducted.

If a pre-appeal brief review had taken place, the Applicants would have received a Notice of Panel Decision from Pre-Appeal Brief Review (form ap.pre.dec) from the Examiner indicating who was on the panel, the results of the panel's review, and signatures by all the panel members. The Applicants never received such a notice.

Assuming, *in arguendo*, that a pre-appeal brief review had been conducted, the Applicants should have been allowed to proceed directly to the Board of Patent Appeals and Interferences because, according to the Examiner's Office Action dated October 4, 2005, there is at least one actual issue for appeal remaining in the above-identified application, namely the rejection under 35 U.S.C. §102(b) and the rejection under 35 U.S.C. §103. In other words, since the Examiner responded to the Pre-Appeal Brief Request for Review of July 15, 2005, by issuing a new Office Action withdrawing one rejection of the original three rejections and maintaining two of the original three rejections, the above-identified application still includes two issues for appeal.

By issuing the Office Action dated October 4, 2005, the Examiner is unnecessarily prolonging the prosecution of the above-identified application. The

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Applicants are entitled to a fair and expeditious examination of the above-identified application.

The Applicants were ready to appeal the rejections on July 15, 2005 and remain ready to appeal the two remaining rejections. The Applicants should not be forced to re-address the same issues through another round of arguments and incur the costs associated this unnecessary and redundant prosecution. Moreover, the Applicants should not be forced to file a second Notice of Appeal and incur the costs and government fees associated therewith.

If the "panel" from the "Pre-Appeal Brief Review" truly reached the conclusion that the claims should be rejected as set forth by the Office Action dated October 4, 2005, the Applicants respectfully request that the "panel" issue a proper Notice of Panel Decision from Pre-Appeal Brief Review and allow the Applicants to expeditiously seek redress of the improper rejections that the Examiner has maintained in the above-identified application. More specifically, if the "panel" from the "Pre-Appeal Brief Review" truly reached the conclusion that the claims should be rejected as set forth by the Office Action dated October 4, 2005, the Applicants respectfully request the opportunity to immediately appeal the Examiner's rejections to the Board of Patent Appeals and Interferences.

SUMMARY

The Applicants never received a proper Notice of Panel Decision from Pre-Appeal Brief Review to the Pre-Appeal Brief Request for Review of July 15, 2005. In lieu of issuing a Notice of Panel Decision from Pre-Appeal Brief Review to the Pre-Appeal Brief Request for Review of July 15, 2005, the Examiner issued an Office Action maintaining two of the original three rejections, thereby unnecessarily prolonging the prosecution of the above-identified application. The above-identified application contains at least one actual issue ready for appeal, thus the Applicants should be given the opportunity to immediately appeal the Examiner's rejections to the Board of Patent Appeals and Interferences.

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CONCLUSION

Therefore, in view of the Examiner's failure to issue a proper Notice of Panel Decision from Pre-Appeal Brief Review to the Pre-Appeal Brief Request for Review of July 15, 2005 and the Examiner's issuance of an Office Action maintaining two of the original three rejections, thereby unnecessarily prolonging the prosecution of the above-identified application, the Applicants respectfully request that the Honorable Commissioner invoke the Commissioner's supervisory authority under 37 C.F.R. 1.181 and instruct the Examiner to withdraw the Office Action dated October 4, 2005 and immediately issue a proper Notice of Panel Decision from Pre-Appeal Brief Review.

The Honorable Commissioner is respectfully encouraged to contact the undersigned to discuss the circumstances warranting this Petition.

Respectfully submitted,



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MJN/mjn